Statement of:

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On Behalf of

The Interstate Mining Compact Commission

Concerning Barriers to the Cleanup of Abandoned Mine Sites

Before the

SUBCOMMITTEE ON WATER RESOURCES and ENVIRONMENT
Of the
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

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Good morning, Mr. Chairman. My name is Joseph Pizarchik and I am Director of the Bureau of Mining and Reclamation within the Pennsylvania Department of Environmental Protection. I am appearing here today on behalf of the Interstate Mining Compact Commission (IMCC). The IMCC is an organization of 22 states located throughout the country that together produce some 80% of the nation's coal, as well as important noncoal materials. Each IMCC member state has active mining operations as well as numerous abandoned mine lands within its borders and is responsible for regulating those operations and addressing mining-related environmental issues, including the reclamation of abandoned mines. I am pleased to appear before this Subcommittee to discuss barriers to the cleanup of abandoned mine sites. In particular, I will address the views of the Commonwealth of Pennsylvania regarding our experience with the reclamation of abandoned mine lands under Title IV and Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and Pennsylvania's Environmental Good Samaritan Act.

I. BACKGROUND

Mr. Chairman, during the past quarter of a century significant and remarkable work has been accomplished pursuant to the abandoned mine lands (AML) program under SMCRA. The Office of Surface Mining Reclamation and Enforcement (OSM) have documented much of this work by the states and in various publications, including the twentieth anniversary report of OSM and a corresponding report by the states. OSM's Abandoned Mine Land Inventory System (AMLIS) provides a fairly accurate accounting of the work undertaken by most of the states over the life of the AML program and also provides an indication of what is left to be done.

Over the past 25 years, tens of thousands of acres of mined land has been reclaimed, thousands of mine openings have been closed, and safeguards for people, property and the environment have been put in place. Based on information maintained by OSM in AMLIS, as of June 30, 2005, $2.6 billon worth of high priority coal-related public health and safety problems has been funded and reclaimed. Another $354 million worth of environmental problems have been funded or completed and $398 million worth of noncoal AML problems have been funded and reclaimed. In addition to the aforementioned federally funded projects, Pennsylvania has taken other steps to address the abandoned mine land problem within the Commonwealth.

There are numerous success stories from around the country where the states' AML programs have saved lives and significantly improved the environment. Suffice it to say that the AML Trust Fund, and the work of the states pursuant to the distribution of monies from the Fund, have played an important role in achieving the goals and objectives set forth by Congress when SMCRA was enacted – including protecting public health and safety, enhancing the environment, providing employment, and adding to the economies of communities impacted by past coal mining.

As we work to address the remaining inventory of abandoned coal mine sites, the states are particularly concerned about the escalating cost of addressing these problems as they continue to go unattended due to insufficient appropriations from the AML Trust Fund for state programs. Unaddressed sites tend to get worse over time, thus increasing reclamation costs. Inflation exacerbates these costs. The longer the reclamation is postponed, the less reclamation will be accomplished. In addition, the states are finding new high priority problems each year, especially as we see many of our urban areas grow closer to what were formerly rural abandoned mine sites. New sites also continually manifest themselves due to time and weather. For instance, new mine subsidence events and landslides will develop and threaten homes, highways and the health and safety of coalfield residents. This underscores the need for constant vigilance to protect our citizens. In addition, as states certify that their abandoned coal mine problems have been corrected under SMCRA, they are authorized to address the myriad health and safety problems that attend abandoned noncoal mines. In the end, the real cost of addressing high priority coal AML problems likely exceeds $6 billion. The cost of cleaning up all coal related AML problems, including acid mine drainage, could be 5 to 10 times this amount and far exceeds available monies. Estimates for cleaning up abandoned noncoal sites are in the billions of dollars.

In my home state of Pennsylvania, Mr. Chairman, over 200 years of mining in Pennsylvania left a legacy of over 200,000 acres of abandoned unreclaimed mine lands. (Pennsylvania's Abandoned Mine Reclamation Plan, 1983.) These abandoned sites include open pits (Attachment 1), some of which are water filled pits (Attachment 2), spoil piles (Attachment 3), waste coal piles, mine openings and subsided surface areas.

Many of the abandoned sites discharge polluted water (Attachment 4). The mine drainage discharges range from alkaline water containing iron to heavily polluted acid discharges containing iron, aluminum, manganese and sulfates. The volume of pollution discharged varies. Some discharges are small seeps (Attachment 5) while others are large underground mine tunnels. One such tunnel discharges 40,000 gallons per minute. (Attachment 6, Jeddo Mine Drainage Tunnel.) According to an EPA Region III list from 1995 there were 4,485.55 miles of streams affected by mine drainage in Pennsylvania, Maryland, Virginia and West Virginia. (Attachment 7.) Three thousand one hundred and fifty eight miles were in Pennsylvania. These discharges have a significant impact on Pennsylvania's streams and rivers. (Attachment 8.)

Pennsylvania began addressing abandoned mine land problems in the 1940's. A more comprehensive and systematic approach to address these problems began in 1968 with the enactment of the Land and Water Conservation and Reclamation Act. After years of government effort and changes in state and federal law that imposed liability on a mine operator or anyone who remined or affected an abandoned discharge, it became clear that without help from other parties, government efforts would take many decades and billions of dollars to clean up all of the problems. Additional options were needed.

Upon examining the issue, Pennsylvania found that operators were obtaining permits for previously abandoned sites, and, using modern equipment, they were mining the coal that previously had not been economically or technologically feasible to remove. These abandoned mine lands were being remined and reclaimed in accordance with modern standards and laws. However, such remining and reclamation was not occurring on sites that contained mine drainage discharges.

Citizen, watershed and environmental groups were also working to address some of the problems in their geographical areas. When Pennsylvania officials tried to leverage the state's limited resources to accomplish more reclamation by working with these groups, we met significant resistance regarding sites that had existing pollutional mine drainage.

Mine operators and citizens alike would not tackle sites that had pollutional mine drainage discharges because state and federal law imposed strict liability on them to permanently treat the discharge if they reaffected the site. Many citizen groups would not attempt to treat abandoned discharges because of the potential liability. They could incur this liability even though they had not created the discharge and even if their remining or reclamation improved the quality of the discharge.

With the advances made in science, technology and our understanding of mine drainage, we in the Pennsylvania mining program knew many abandoned discharges could be eliminated or improved at little or no cost to the Commonwealth if we could address the potential for personal liability.

In Pennsylvania we took two different approaches to limit the potential liability, to the extent we could. First, for remining and reclamation of abandoned mine sites with preexisting discharges we worked to change the mining laws to limit a mine operator's potential liability. Incentives to encourage remining and reclamation were also enacted. Second, Pennsylvania enacted a new law to provide protections and immunities to those people who were not legally liable but who voluntarily undertook the reclamation of abandoned mine lands or abatement of mine drainage. This new law is called the Environmental Good Samaritan Act.

II. REMINING

Under the changes made to the coal mining laws for remining, an operator gathers data on the quality and quantity of the preexisting pollutional discharge to establish a baseline of the pollutants being discharged. The operator must demonstrate in its mining permit application, and the Pennsylvania Department of Environmental Protection must find, that the remining and reclamation of the site is likely to improve or eliminate the preexisting discharge in order for the permit to be issued. These permitting decisions are made using the Best Professional Judgment Analysis in accordance with the Clean Water Act. If the remining and reclamation is successful, then the mine operator is not held responsible to treat that portion of the preexisting discharge that remains. If the discharge is made worse, then the operator must treat the discharge to the point of the previously established baseline of pollutants.

Pennsylvania's remining program has been very successful. In a 2000/2001 study of 112 abandoned surface mines containing 233 preexisting discharges that were remined and reclaimed, 48 discharges were eliminated, 61 discharges were improved, 122 showed no significant improvement and 2 were degraded. In terms of pollutant load reductions, the net acid load was reduced by 15,916 pounds per day or 2,900 tons per year. The net iron load was reduced by 518 pounds per day or 95 tons per year. The net manganese load was reduced by 31 pounds per day or 5.6 tons per year. Aluminum was reduced by 303 pounds per day or 55 tons per year. The sulfates being discharged to the streams were reduced by 13,175 pounds per day or 2,400 tons per year. Approximately 140 miles of streams were improved. The pollutant load reductions were due to reductions in the flow and concentrations. If these materials were to have been removed through treatment, it is estimated it would have cost at least $3,000,000 per year, every year. (This number does not include the costs of constructing the treatment systems.) These cost savings do not include what it would have cost Pennsylvania to reclaim these 112 sites. These environmental improvements occurred at no cost to the government or taxpayers because the operator's potential liability was limited and the operators were able to recover the coal that remained on the site. In addition, the operators paid a reclamation fee of 35 cents per ton of coal mined, reclaimed the land in accordance with modern standards and made a profit.

The benefits of remining are not limited to water quality improvements. Significant amounts of Pennsylvania's abandoned lands have been reclaimed at a significant savings to the government. For example, from 1995 through 2005, 465 projects reclaimed 20,100 acres and eliminated 139.68 miles of highwall. Abandoned waste coal piles were eliminated (Attachments 9 and 10 – before and after), abandoned pits were filled (Attachment 11), and lands were restored to a variety of productive uses, including wildlife habitat (Attachment 12). The estimated value of this reclamation is $1,135,695,950 - money the state and federal government did not have to spend to reclaim these abandoned mine lands.

III. ENVIRONMENTAL GOOD SAMARITAN ACT

A second approach undertaken to encourage reclamation of abandoned mine lands and treatment or abatement of abandoned discharges occurred in 1999 when Pennsylvania's General Assembly enacted the Environmental Good Samaritan Act. The purpose of the Good Samaritan Act was to encourage volunteers to improve land and water adversely affected by mining or oil and gas extraction by limiting the potential liability. Prior to the Good Samaritan Act, anyone who voluntarily reclaimed abandoned lands or treated water pollution for which they were not liable could be held responsible for treating the residual pollution.

Projects must meet certain criteria to be covered by the Good Samaritan Act. The project must be reviewed and approved by Pennsylvania's Department of Environmental Protection. The proposed project must restore mineral extraction lands that have been abandoned or not completely reclaimed, or it must be a water pollution abatement project

that will treat or stop water pollution coming from abandoned mine lands or abandoned oil or gas wells.

The law contains protections for landowners and for the people who do the work.

Pennsylvania's Environmental Good Samaritan Act provides that a landowner who provides access to the land without charge or compensation to allow a reclamation or water pollution abatement project is eligible for protection. The Good Samaritan Act also provides that a person, corporation, nonprofit organization or government entity that participates in a Good Samaritan project is eligible for protection if they:

- Provide equipment, materials or services for the project at cost or less than cost.
- Are not legally liable for the land or water pollution associated with past mineral extraction.
- Were not ordered by the state or federal government to do the work.
- Are not performing the work under a contract for profit, such as a competitively bid reclamation contract.
- Are not the surety that issued the bond for the site.

Landowners who provide free access to the project area are not responsible for:

- Injury or damage to a person who is restoring the land or treating the water while the person is on the project area.
- Injury or damage to someone else that is covered by the people restoring the land or treating the water.
- Any pollution caused by the project.
- The operation and maintenance of any water pollution treatment equipment constructed on the land, unless the landowner damages or destroys the equipment or refuses to allow the equipment to be operated or repaired.

Landowners are not protected from liability if they:

- Cause injury or damage through the landowner's acts that are reckless, or that constitute gross negligence or willful misconduct.
- Charge a fee or receive compensation for access to the land.
- Violate the law.
- Fail to warn those working on the project of any hidden dangerous conditions of which they are aware within the project area.

Landowners are also not protected if adjacent or downstream landowners are damaged by the project and written or public notice of the project was not provided.

People who participate in a Good Samaritan project are not responsible for:

- Injury or damage that occurs during the work on the project.
- Pollution coming from the water treatment facilities.
- Operation and maintenance of the water treatment facilities.

Good Samaritan project participants are not protected if they:

- Cause increased pollution by activities that are unrelated to work on an approved project.

- Cause injury or damage through acts that are reckless, constitute gross negligence or willful misconduct.
- Violate the law.

Participants are also not protected if adjacent or downstream landowners are damaged by the project and written or public notice of that project was not provided.

In addition to being crafted to address potential legal liabilities that deter Good Samaritans from acting, Pennsylvania's Environmental Good Samaritan Act was also crafted to address potential financial hurdles that could impede a Good Samaritan project. A landowner, contractor or materialman who desires to profit from the efforts of the volunteers can do so. People who profit from Good Samaritans are not eligible for the immunities and protections available to the Environmental Good Samaritans. This approach was taken to encourage more people to provide their goods and services as economically as possible to allow Good Samaritans to accomplish more with their resources.

Pennsylvanians have undertaken 34 Good Samaritan projects. Participants include local governments, individuals, watershed associations, corporations, municipal authorities and conservancies. The status of the projects range from "very successful at removing metals from the water" to "not yet started." Some projects are simple low maintenance treatment systems. Other projects are large complex projects. A project in Vintondale, Pennsylvania, transformed an abandoned mine into a park that treats acid mine drainage, celebrates the coal mining heritage, provides recreation facilities for Vintondale's residents and serves to heighten public awareness and educate people on treating mine drainage.

IV. CONCLUSION

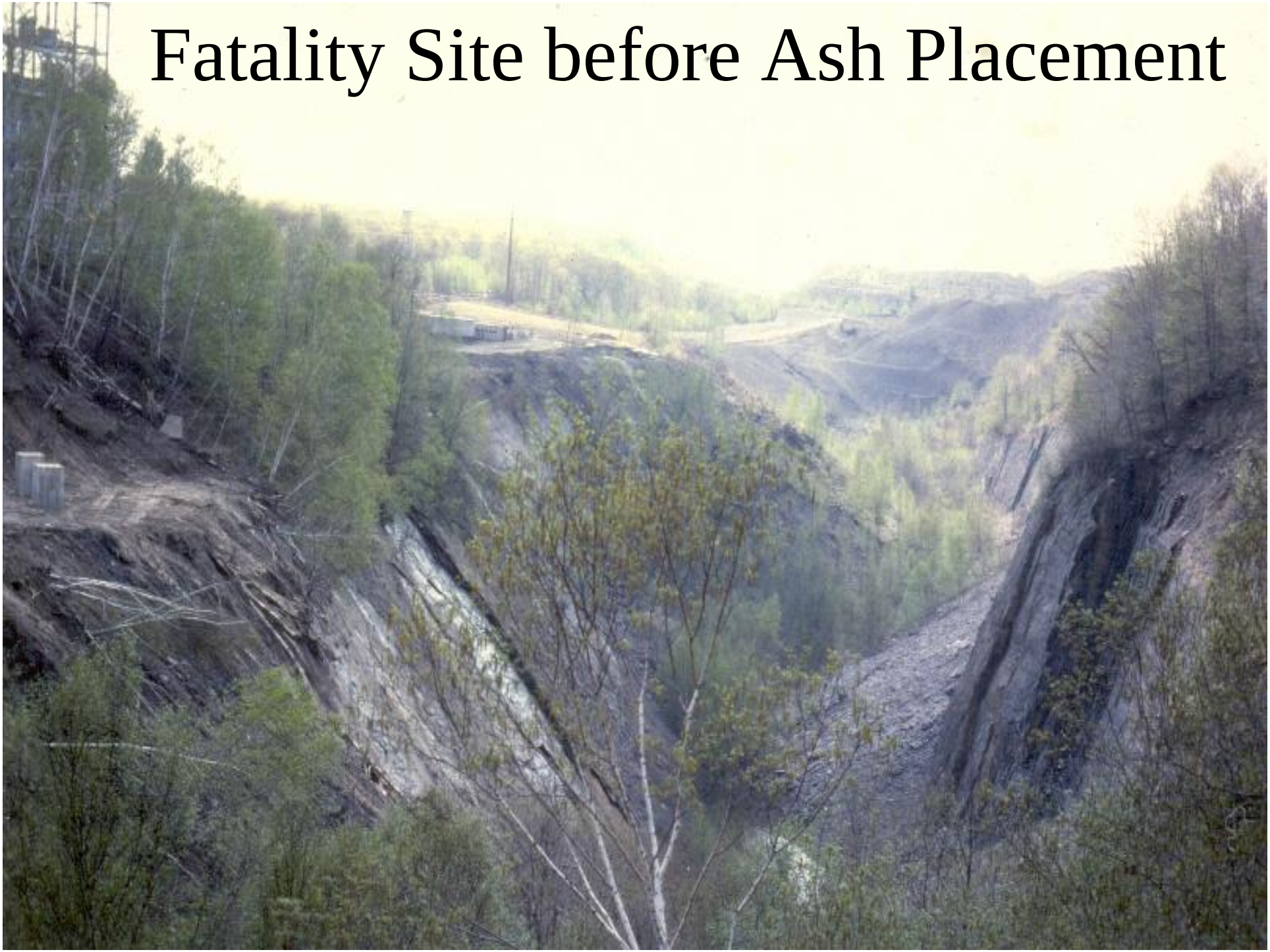
While Pennsylvania's Good Samaritan Act has been successful in helping to engage local residents in restoring and assisting in the restoration of their environment, there are concerns. First, the Federal Clean Water Act citizen suit provision still poses a potential liability to the Good Samaritans. Recent developments portend actions by some who hold a strict, literal view of the National Pollutant Discharge Elimination System (NPDES) permitting requirements and of the Total Maximum Daily Load requirements. Without a Federal Good Samaritan Act or an amendment to the CWA providing that Good Samaritan projects and abandoned mining discharges are not point sources and are not subject to NPDES permitting requirements, the potential good work of volunteers in Pennsylvania and of others throughout the country are at risk. People who undertake projects that benefit the environment and America could be held personally liable for making things better because they did not make them perfect.

Mr. Chairman, our experiences in Pennsylvania with Good Samaritan cleanups and remining cleanups is instructive for others who are struggling to find effective mechanisms for addressing abandoned mine sites, be they coal or noncoal. Through the Interstate Mining Compact Commission, we have worked with other

organizations to address this critical matter. We look forward to future opportunities to work together. We also welcome the opportunity to work with this Subcommittee, Mr. Chairman, to address the legal and legislative barriers that stand in the way of meaningful reclamation of abandoned mines throughout the country.

Thank you for the opportunity of appearing before you today. I would be happy to answer questions you may have or to provide follow up answers at a later time.

Fatality Site before Ash Placement



ATTACHMENT 1

Shen Penn Abandoned Pit

ATTACHMENT 2

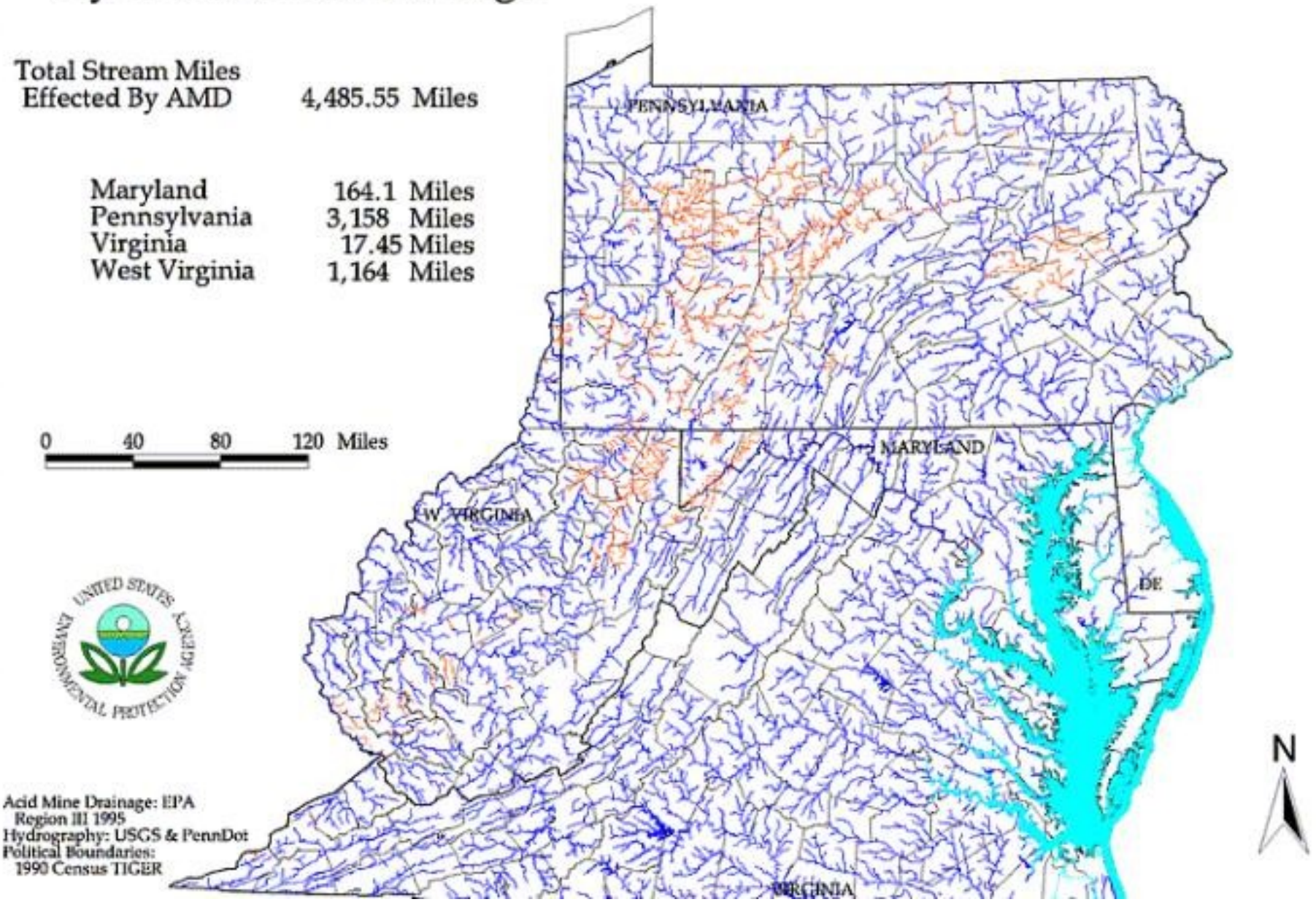
ATTACHMENT 3

ATTACHMENT 4

ATTACHMENT 5

ATTACHMENT 6

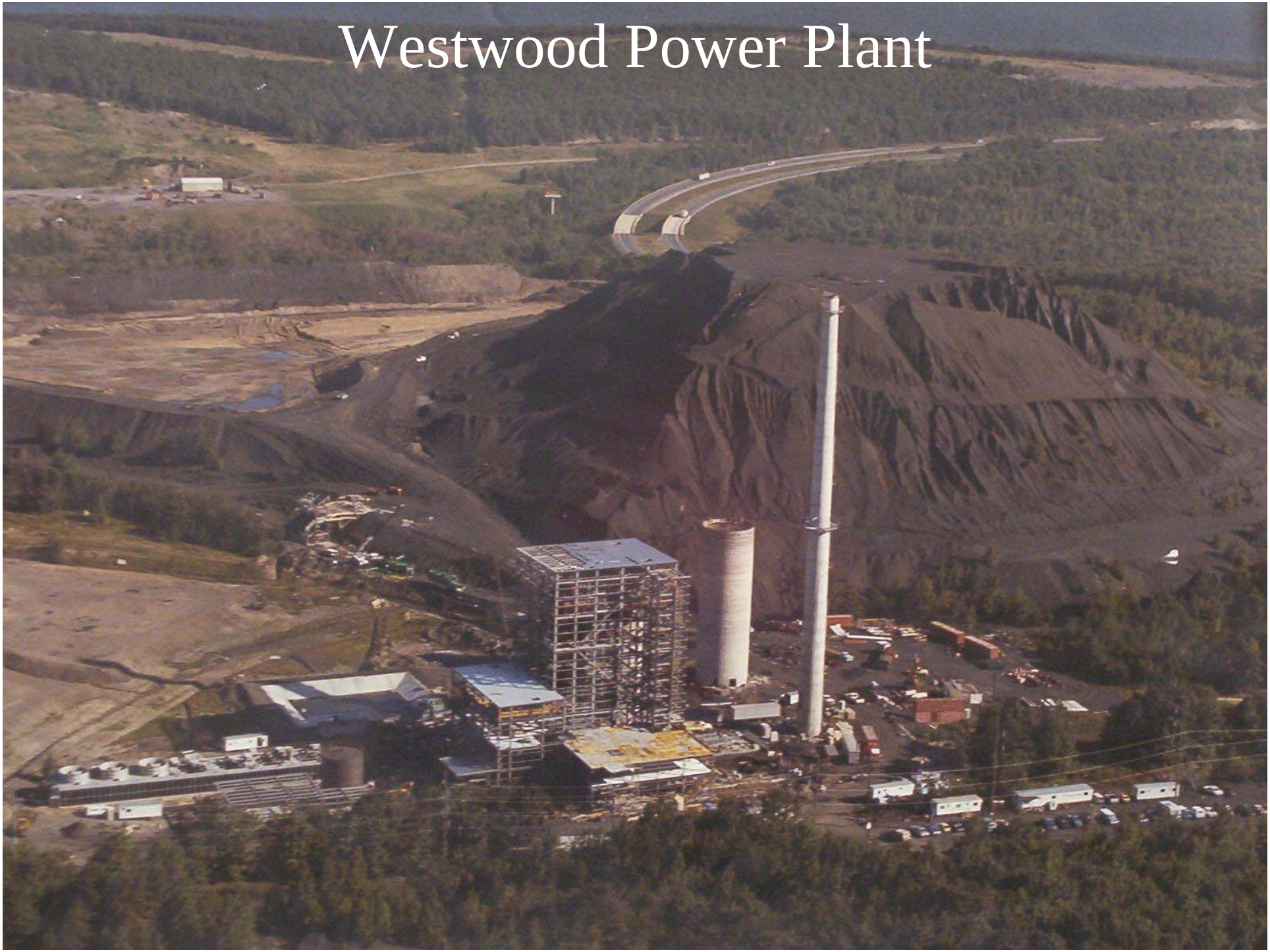
EPA REGION III
4,485 Stream Miles Effected By Acid Mine Drainage



ATTACHMENT 7

ATTACHMENT 8

Westwood Power Plant



ATTACHMENT 9

Westwood Pile Removed

ATTACHMENT 10

Backfilling

ATTACHMENT 11

ATTACHMENT 12